IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.1769 of 2002

Date of Decision: March 15, 2007

Akash Verma

...Petitioner

VERSUS

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: None for the petitioner.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

Mr.S.S.Rangi and Mr.P.S.Jammu, Advocates,
for respondents No.2 & 3.

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RANJIT SINGH, J.

This revision petition is directed against the order passed by Sub-Divisional Judicial Magistrate, Malout, who, after recording confession of the respondents herein in the form of plea of guilty under Sections 353/186/477 IPC, directed their release on probation. Grievance of the petitioner is that the respondents could not have been released on probation as the offence under Section 477 IPC is punishable with imprisonment for life and hence the

impugned order of the Sub Divisional Judicial Magistrate, Malout is legally un-sustainable in view of the provisions of Section 4 of the Probation of Offenders Act.

The facts, in brief, are that respondents No.2 and 3 Bindu Batheja and Satish Kumar, both brother and sister, had entered into the office of D.S.P.Malout when Bindu Batheja had snatched one application alongwith certain papers from the Reader of D.S.P. Manmohan Kumar Sharma. Having snatched these documents, she put these under her bra. Not only that, she threatened the officials with dire consequences in case any one of them attempted to retrieve the documents or stop her. She also stated that she would accuse them of attempt to rape or would commit suicide in case any one interfered in her action. Her brother, Satish Kumar, however, was arrested at the spot. This incident led to registration of a case and documents, allegedly taken by her, were recovered. Challan was presented, ultimately leading to framing of charge under Sections 353/186/477 read with Section 34 IPC. Evidence of one witness, namely, Manmohan Sharma (PW-1) was recorded, who fully supported the case of the prosecution. Thereafter both the respondents moved an application for recording their confessional statements. While doing so, they prayed for pardon and for taking lenient view. Taking into account the confessional statement of the respondents, which was found to be voluntarily in nature and free from any kind of pressure, the respondents were convicted for the offences charged and after hearing them on the quantum of sentence, they were ordered to be released on probation on furnishing personal bonds in the sum of Rs.10,000/- each with one

surety in the like amount. The respondents were to appear and receive sentence as and when called during the period of one year and were further required to maintain peace and good behaviour. They were directed to pay Rs.500/-as costs of proceedings. The said order is impugned in the present revision and it is prayed that directions to release the respondents on probation could not have been made as the offence under Section 477 IPC is punishable with life imprisonment and Section 4 of the Probation of Offenders Act would stand as a bar for release of the respondents on probation.

On notice having been issued, counsel have put in appearance for the respondents. The counsel for the respondents could not raise any serious objection to this technical plea advanced on behalf of the petitioner. It may, however, require consideration that any interference in the order releasing the respondents on probation may have an effect on their conviction, which has resulted only due to confession of the respondents as they may have agreed to plead guilty with some assurance for release on probation.

It is true that the concept of `plea bargaining' and negotiated settlement of criminal cases is not available under the provisions of Criminal Justice System. Section 320 Cr.P.C. do provide for compounding of certain offences with the permission of the court, but except for this provision, no concept of negotiated settlement of criminal cases is permissible. In this regard, reference can be made to the case of ***State of Uttar Pradesh Vs. Chandrika, AIR 2000 (SC) 164.*** In this case, Hon'ble Supreme Court has further referred to its earlier decisions in the cases of ***Madanlal Ram Chandra Daga etc. Vs. State of Maharashtra, 1968(3) SCR 34 and***

Murlidhar Meghraj Loya Vs. State of Maharashtra, 1976(3) SCC 684. In Madanlal Ram's case (supra), it is observed that it is wrong for the court to enter into a bargain and that the offences should be tried and punished according to guilt of accused and further that if court thinks that leniency is to be shown, then it may impose a lighter sentence, but it should never be a party to a bargain. Even in Murlidhar Meghraj Loya's case (supra), it is held that “Law Enforcement” repudiates the idea of compromise as immoral, or at best a necessary evil. It was further observed that the “State” can never compromise and it must “enforce the law”. In ***Kachhia Patel Shantilal Koderlal Vs. State of Gujarat and another, 1980(3) SCC 120*** it is viewed that practice of plea bargaining is unconstitutional, illegal, which, as per observation of the Supreme Court, would tend to encourage corruption, collusion and pollute the pure fount of justice. It would, thus, be safe to say that there is no provision for negotiating settlement of a criminal case or for imposing a lighter sentence on the ground that the person, accused of the offence, has confessed his guilt and has pleaded for leniency. In short, a quantum of sentence under such circumstances cannot be bargained.

Though there is no clear indication that there was any plea-bargaining in this case or that the release of the respondents on probation is on account of any negotiation between the court and the respondents, yet it appears that the court was swayed by the act of respondents pleading guilty and confessing their guilt in directing their release on probation. It would be reasonable to infer that this lighter sentence has followed only on account of the action of the

respondents in confessing their guilt and pleading for leniency and mercy. In a way, it may give an indication that some hidden or unwritten negotiation may have taken place in this case as otherwise release on probation in an offence under Section 477 IPC would not have come. If that be so, it would be rather unfair to enhance the sentence awarded to the respondents without giving them a chance to prove their innocence. Enhancement or imposition of a sentence in a revision or appeal, once the respondents were released on probation, would not as such be reasonable, just or fair and may tend to offend the provisions of Article 21 of the Constitution of India. The proper course in such case would be to order re-trial, if it is found that the sentence awarded cannot be sustained so as to give fair and reasonable opportunity to the respondents to plead and prove their case. In this regard, a reference can be made to the case of ***Thippaswamy Vs. State of Karnataka, (1983) 1 Supreme Court Cases 194***, wherein it is observed that where there is an indication of plea-bargaining to have taken place, the court in appeal or while exercising revisional jurisdiction should not enhance the sentence as it would not be reasonable, fair and just to act on the plea of guilt for the purpose of enhancing sentence. While so holding, the court has further observed that it did not wish to suggest that the court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused, as a result of plea bargaining. It is viewed by the court that it would be clearly violative of Article 21 of the Constitution of India to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. In this

background, it is held by the Hon'ble Supreme Court that the court of appeal or revision in such cases should set-aside the conviction and sentence of the accused and remand the case to the trial court, so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed. The relevant observation of the Hon'ble Supreme Court is as under:-

> “It is obvious that by reason of plea-bargaining, the appellant pleaded guilty and did not avail of the opportunity to defend himself against the charge, which is a course he would certainly not have followed if he had known that he would not be let off with a mere sentence of fine but would be sentenced to imprisonment. It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. Of course, when we say this, we do not for a moment wish to suggest that the court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonable, fair and just to act on the plea of guilty for the purpose of enhancing the sentence. The court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper

sentence can be passed against him."

The above noted observations of the Hon'ble Supreme Court are attracted to the facts of the present case. It seems that plea-bargaining appears to have taken place and it is only on account thereof that the respondents in this case had confessed their guilt. They were let off by directing their release on probation. It, thus, appears obvious that the respondents had confessed their guilt with the understanding that they may be let off by directing their release on probation. If this order directing their release on probation is to be interfered with, it would be fair and reasonable to allow the respondents to avail the opportunity to defend themselves against the charge. As already noticed, the order releasing the respondents on probation cannot be sustained not only on account of the fact that the respondents could not have been released on probation after conviction of an offence under Section 477 IPC, but also due to the fact that the sentence is palpably lenient and may need interference. The only proper course, as such, would not only be to set-aside the sentence, but also the conviction of the respondents and to remand the case for trial, so that the respondents, if they so wish, can defend themselves against the charge and if found guilty, are awarded proper sentence.

The present revision is accordingly allowed. The order convicting the respondents and directing their release on probation is set-aside and the case is remanded back to the court of Sub Divisional Judicial Magistrate, Malout, so that the respondents may be tried in accordance with law. The respondents would have proper and adequate opportunity to defend themselves, if they wish

to contest the charges. Needless to mention that they would still be at liberty to confess/plead guilty.

It is made clear that while passing the order I have not expressed any opinion on merits of the case against the respondents and the Judicial Magistrate would try the respondents ignoring their confession unless it is so repeated before him and would decide the case on merit on the basis of evidence led before him. If need so arises, he would pass a proper sentence, if he comes to conclude that the respondents are guilty of any offence alleged against them.

The parties through their counsel are directed to appear before the Sub Divisional Judicial Magistrate, Malout on 28.5.2007.

March 15, 2007 (RANJIT SINGH)
ramesh JUDGE